

# Safetywize

Consultants & Advocates

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20 September 1999

COPY # 2

The Manager  
Dockets management Branch  
HFA 305  
Food & Drug Administration  
5680 Fiskers Lane  
Rockville MD 20852  
U.S.A.

Dear Sirs

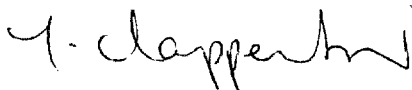
**Re: Petition No 98 P. 0683**

Safetywize made a submission on similar claims by Archer Daniels Midland Corporation last year (ref G.R.N. 000001). We wish that submission to be taken into account in the present health claim petition.

G.R.N 000001 failed, due to non-disclosure of adverse effects. Protein Technologies also should fail on the same grounds now.

Such advertising claims have been found in our country to be illegal. A decision of the Broadcasting Standards Authority is enclosed in support, and to assist you in your deliberations. This is a Statutory Body, and has the legal weight and protection of a Court decision.

Yours faithfully



Yvonne Clapperton

98P-0683

LET3

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 1999- 148

Dated the 16th day of September 1999

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

R F JAMES  
of Whangarei

Broadcaster  
TELEVISION NEW ZEALAND LTD

S R Maling Chairperson  
L M Loates  
R McLeod  
J Withers

DECISION

Summary

*Good Morning's* nutritionist interviewed a representative from the International Soy Advisory Board and demonstrated the use of soy products in cooking in a broadcast by TVNZ on TVOne on 3 May 1999 beginning at 10.00am.

Mr James of Whangarei complained to Television New Zealand Ltd that the programme was unbalanced, unfair and inaccurate as it did not warn viewers of the known health risks of using soy products, nor did it reveal that the guest was either a consultant to or an employee of a company which markets the products.

TVNZ responded that the programme did not purport to investigate the merits of soy products, but was essentially a cooking demonstration carried out while the guest discussed the principal ingredient. It maintained that as research on the benefits of soy products was equivocal, it was not in a position to judge whether the broadcast was accurate. It did not consider standard G6 was applicable to what was essentially a cooking demonstration, and declined to uphold the complaint.

Dissatisfied with TVNZ's decision, Mr James referred the complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

*For the reasons given below, the Authority upholds the complaint that standards G1 and G6 were breached.*



### Decision

The members of the Authority have viewed the item complained about and have read the correspondence which is listed in the Appendix. On this occasion, the Authority determines the complaint without a formal hearing.

The resident nutritionist of the *Good Morning* programme broadcast by TVNZ discussed soy products with a representative of the International Soy Advisory Board, in conjunction with a cooking demonstration, on 3 May 1999 beginning at 10.00am. The benefits of soy consumption were said to include a lower incidence of heart disease, improved reproductive health, reduction in the incidence of osteoporosis and alleviation of the symptoms of menopause. A variety of soy products were identified as containing qualities which provide those benefits.

Mr James complained to TVNZ that the programme was not fair and balanced in that it promoted "non-existent health benefits" of soy products and failed to warn of their known health risks for which, he said, there was ample medical and scientific evidence. He also objected to the programme's promotion of named commercial products, and its failure to advise that the guest was a consultant to or an employee of the Sanitarium Health Food company. Finally, he complained that TVNZ had failed to allow time for opposing views to be heard. He attached a letter from the USFDA's National Centre for Toxicological Research which, he said, cited evidence of occurrence of dementia, brain atrophy, autoimmune thyroiditis and reproductive malformation as a result of consuming soy products.

In its response, TVNZ advised that it had considered the complaint under standards G1 and G6 of the Television Code of Broadcasting Practice. Those standards require broadcasters:

G1 To be truthful and accurate on points of fact.

G6 To show balance, impartiality and fairness in dealing with political matters, current affairs and all questions of a controversial nature.

TVNZ explained that its resident nutritionist featured regularly. On this occasion, she was joined by a dietitian and consultant nutritionist based in Australia who, although an independent practitioner, was a member of the International Soy Advisory Board. TVNZ stressed that this segment of the programme was not paid for by any commercial company, but was part of the editorial content of *Good Morning*.

It noted that the guest was introduced as representing the International Soy Advisory Board and it was not surprising therefore that she spoke warmly of soy products. The views she gave were clearly her own, it added, although much of what she said was "well founded in current research". It continued:

In considering the matter of a guest presenting her views we were reminded that standard G3 of the Codes of Broadcasting Practice acknowledges the right of people to express their own opinions.



In TVNZ's view, the programme was not presented as a serious investigation into the pros and cons of soy products. Essentially, it argued, it was a cooking demonstration carried on while the guest discussed different types of soy product.

As far as standard G1 was concerned, TVNZ responded that it had no qualifications to rule on which of the material provided by Mr James and by the International Soy Advisory Board was true and accurate, noting that there were some discrepancies between them.

TVNZ argued that standard G6 was not really applicable to what was essentially a cooking demonstration. It pointed out that there were many food products over which there was debate concerning health risks. In the context of a cooking programme, it argued, it would not be appropriate to outline such risks. It declined to uphold the complaint.

In subsequent correspondence with TVNZ, Mr James questioned its reference to a meeting of the International Soy Advisory Board as confirmation that the Board had international standing. Mr James contended that the "meeting" had been convened by Sanitarium, and noted that the Board's email address was the same as that of Sanitarium's public relations representative in Australia.

When he referred the matter to the Authority, Mr James complained that TVNZ had failed to give consideration to the substance of the complaint. In particular, he claimed that TVNZ had ignored the complaint that the programme involved medicinal claims for foodstuffs, and therefore breached the Medicines Act.

He also complained that TVNZ had failed to take into account the international research reports, which he had provided to it, which demonstrated that soy products could be harmful. He claimed that TVNZ's peremptory dismissal of his complaint was evidence of its bias towards one of its largest advertisers (Sanitarium).

To TVNZ's assurance that the segment was programme material and not a product promotion, Mr James responded that this was not clear to viewers. In particular, he claimed, the visit of the guest to this country had been paid for by Sanitarium.

In concluding, he stated that TVNZ could have avoided all the paperwork involved in the complaint had it "acted with the slightest regard to democratic principles and given the truth equal time" on the programme. He enclosed "the full file of correspondence" between TVNZ and himself on the matter.

In its response to the Authority, TVNZ gave an assurance that the segment had not been paid for by the company. The programme content, it said, was under the editorial control of the programme's producer.

TVNZ said that it was satisfied that the guest had the qualifications to speak with authority on the subject of soy products, and reiterated that the views presented were her own. It provided a letter from her in which she outlined her background and qualifications, and gave some general information about the Soy Advisory Board.



It advised that it had nothing further to add, except to note that any broadcaster was entitled to accept the expertise of its guests, whatever the subject matter.

When he made his final comment to the Authority, Mr James first addressed the issue of the guest's qualifications. He referred to her web page, and described her as a "nutritional consultant for hire", noting that she had appeared on the programme as what he called a "paid representative of Sanitarium". Her academic qualification was a Bachelor's degree, he noted, and she had no record of having published any original research. On the other hand, he continued, those who contended that dietary soy products could cause harm were "eminently credentialled post-doctoral scholars" with numerous published papers to their credit. He provided samples of their research reports. He also cited other similar research findings, providing excerpts from the research reports.

Mr James emphasised that he was not intending to attack the programme's guest personally. However, he added, the matter was not trivial, as it was a deliberate attempt to portray "poisons as health foods" against the overwhelming weight of scientific opinion. He agreed that the guest was entitled to express her opinions, as long as it was clear they were merely her opinions and not presented as fact.

Mr James reiterated comments made previously, including noting that, on the basis of his inquiries, the International Soy Advisory Board appeared to have no legal status and that one of its three offices was "a drop-box at a public relations firm in Sydney".

Whether or not the guest was qualified to discuss soy products, Mr James contended that it should have been made clear that she was a paid consultant to Sanitarium. He also maintained that the health claims she made appeared to breach both the Food Act and the Medicines Act, and argued that it was in the public interest to have the other side of the issue put. Further, he emphasised that it was in the public interest for a clear distinction to be made between promotional advertising and editorial material.

His concern, he said, had added weight when it was pointed out that the risks of permanent hormonal damage from soy "poisons" were greatest for women and children, and the programme was aimed specifically at women. Some of the claims made by the guest, he observed, had already been found to breach the Advertising Code of Ethics in another forum. In addition, he noted that the Ministry of Health had previously notified Sanitarium and the Television Commercials Approvals Bureau that therapeutic claims for a food product were not permitted under the Medicines Act. He observed that it was immaterial whether that was in programme material or advertising.

Finally, Mr James advised that the Commerce Commission had commenced three prosecutions against Sanitarium under the Fair Trading Act for claiming health benefits for So Good soy milk. As a result, Sanitarium had agreed to undertake to ensure that all of its promotions complied with the Fair Trading Act. He suggested that TVNZ had been a party to breaching that settlement by its broadcast of the segment on *Good Morning*.



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Mr James reiterated comments made previously, including his criticism of the International Soy Advisory Board and that one of its three offices was "a drop-box at a post office".

He noted that the guest was qualified to discuss soy products, but that it should have been made clear that she was a paid representative. He also maintained that the health claims she made appeared to breach both the Food Act and the Medicines Act, and argued that it was in the public interest to have the other side of the issue put. Further, he emphasised that it was in the public interest for a clear distinction to be made between promotional advertising and editorial material.

His concern, he said, had added weight when it was pointed out that the risks of permanent hormonal damage from soy "poisons" were greatest for women and children, and the programme was aimed specifically at women. Some of the claims made by the guest, he observed, had already been found to breach the Advertising Standards Code in another forum. In addition, he noted that the Ministry of Health had previously notified Sanitarium and the Television Commercials Approvals Bureau that health claims for a food product were not permitted under the Medicines Act. He observed that it was immaterial whether that was in programme material or advertising.

Finally, Mr James advised that the Commerce Commission had commenced three prosecutions against Sanitarium under the Fair Trading Act for claiming health benefits for "Good soy milk". As a result, Sanitarium had agreed to undertake to ensure that all of its promotions complied with the Fair Trading Act. He suggested that TVNZ had been a party to breaching that settlement by its broadcast of the segment on "Good Morning".



The Authority notes that no effort was made on the programme to point out that there is significant disagreement among the experts about the claimed health benefits of soy. As these criticisms were not raised or discussed, the Authority concludes that the programme lacked impartiality and balance, and that the standard was breached.

**For the above reasons, the Authority upholds the complaint that a segment on *Good Morning* on 3 May 1999, broadcast by Television New Zealand Ltd, breached standards G1 and G6 of the Television Code of Broadcasting Practice.**

As the Authority notes above, TVNZ insisted that it retained editorial control of the segment complained about, and stated explicitly that the segment had not been paid for by any commercial company. The Authority notes that there is an increasing tendency in broadcasts of this type to blur the lines between programmes which are editorial, advertorial, infomercial and/or advertisements. The Authority points out that complaints about editorial content are its responsibility, while complaints about advertisements are the responsibility of the Advertising Standards Complaints Board.

The Authority acknowledges that the increasing overlap between these types of programmes is part of a developing practice in broadcasting. To enable viewers to understand clearly whether a broadcast is essentially a programme under the editorial control of the broadcaster, or an advertisement, the Authority signals that it considers that the Television Code of Broadcasting Practice, when next revised, should include a provision similar to the two following standards. It will consult with broadcasters accordingly.

The first is guideline 7f from the recently revised Radio Code of Broadcasting Practice. It reads:

7f Advertisements and infomercials shall be clearly distinguishable from other programme material.

The second is Rule 1 of the Advertising Code of Ethics which states:

1. **Identification** – Advertisements should be clearly distinguishable as such, whatever the form and whatever the medium used; when an advertisement appears in a medium which contains news or editorial matter, it must be presented so that it is readily recognised as an advertisement.

Having upheld a complaint, the Authority may make orders under s.13 or s.16 of the Broadcasting Act. It invited submissions from the parties on the question of penalty. TVNZ said it was prepared to broadcast a statement if the Authority considered that a penalty was warranted, while Mr James sought "equal time" for an expert to advance a scientific discussion of the issue.

Having considered the submissions, the Authority concludes that a statement summarising this decision is the appropriate penalty in this instance.



**ORDER**

Pursuant to s.13(1) of the Broadcasting Act, 1989, the Authority orders Television New Zealand Ltd to read a statement, to be approved by the Authority, summarising this decision, within one month of the date of this decision, on the *Good Morning* programme.

Signed for and on behalf of the Authority



Sam Maling  
Chairperson

16 September 1999



Appendix

The following correspondence was received and considered by the Authority when it determined this complaint:

1. Mr R F James's Complaint to Television New Zealand Ltd – 13 May 1999
  2. TVNZ's Response to the Formal Complaint – 18 May 1999
  3. Mr James's Further Letter to TVNZ – 21 May 1999
  4. Mr James's Further Letter to TVNZ plus attachments – 23 May 1999
  5. Mr James's Referral to the Broadcasting Standards Authority plus attachments – 31 May 1999
  6. TVNZ's Response to the Authority plus attachments – 8 June 1999
  7. Mr James's Final Comment plus attachments – 24 June 1999
  8. Further Comment from Mr James – 27 June 1999
  9. Further Comment from Mr James plus attachments – 30 June 1999
  10. Mr James's Submission on Penalty – 11 August 1999
  11. TVNZ's Submission on Penalty – 12 August 1999
- Mr James's Response to TVNZ's Submission – 16 August 1999



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